



Dora
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2012 Sunset Review: Acupuncturist Licensing Program

October 15, 2012





Executive Director's Office

Barbara J. Kelley
Executive Director

John W. Hickenlooper
Governor

October 15, 2012

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado acupuncturist licensing program. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2013 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 29.5 of Title 12, C.R.S. The report also discusses the effectiveness of the Director of the Division of Professions and Occupations and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley
Executive Director





John W. Hickenlooper.
Governor

Barbara J. Kelley
Executive Director

2012 Sunset Review: Colorado Acupuncturist Licensing Program

Summary

What Is Regulated?

Acupuncturists use thin, solid metal needles to penetrate the skin and stimulate anatomical points as a means of improving and maintaining health. The practice of acupuncture also includes the use of magnets or lasers to stimulate acupuncture points, cupping (the use of heat-filled glass cups to create suction against the body), moxibustion (the burning of herbs near acupuncture points), herbal remedies, and other treatments.

Why Is It Regulated?

Regulation assures that acupuncturists meet minimum standards of competence.

Who Is Regulated?

In September 2012, there were 1,141 licensed acupuncturists in the state of Colorado.

How Is It Regulated?

The Director of the Division of Professions and Occupations (Director) within the Colorado Department of Regulatory Agencies is vested with the authority to regulate acupuncturists. In order to qualify for a license to practice acupuncture, applicants must provide evidence that they have completed an accredited education program in acupuncture (or possess substantially similar education and experience), possess current certification from the National Certification Commission for Acupuncture and Oriental Medicine, and hold professional liability insurance in the amount prescribed by law.

What Does It Cost?

In fiscal year 10-11, the total cost of the program was \$75,270 and there were 0.45 full-time equivalent employees associated with the program.

What Disciplinary Activity Is There?

From fiscal year 06-07 to 10-11, the Director took a total of 12 disciplinary actions against acupuncturists, including five letters of admonition, five probations and two relinquishments. The Director also issued seven cease and desist orders for the unlicensed practice of acupuncture.

Key Recommendations

Continue the regulation of acupuncturists for nine years, until 2022.

There are few complications associated with acupuncture, but there are significant potential risks. Under the current regulatory regime, prospective acupuncturists are required to complete an education program and obtain national certification (which requires passing three examinations) before applying for a Colorado license. These requirements assure that entry-level acupuncturists possess the skills and knowledge to practice safely, thereby protecting the public. Therefore, the General Assembly should continue the regulation of acupuncturists for nine years, until 2022.

Repeal the words “traditional” and “oriental” from the definition of the practice of acupuncture in reference to adjunctive therapies.

While the practice of acupuncture remains firmly grounded in tradition, the modalities and techniques used by modern acupuncturists would likely be unrecognizable to its original practitioners. Accordingly, the definition of the “practice of acupuncture” should be revised to simply refer to “adjunctive therapies within the scope of acupuncture” rather than “traditional oriental adjunctive therapies.” Making this change would not change or expand acupuncturists’ scope of practice. Rather, the revised definition would provide a more accurate reflection of acupuncture scope of practice in the 21st century and allow for the continuing evolution of the profession.

Revise the language regarding the practice of acupuncture as it relates to other healing arts.

Section 12-29.5-102(3.5), C.R.S., appropriately prohibits acupuncturists from practicing other health care professions. However, it also prohibits them from performing therapies allowed as part of those other professions. This is problematic because the scopes of practice of health care providers inevitably overlap. Consequently, a wholesale prohibition on performing any therapies that fall within another profession’s scope could effectively prohibit a practitioner from performing therapies that are within his or her own scope. The General Assembly should revise section 12-29.5-102(3.5), C.R.S., to establish that a license to practice acupuncture does not authorize a person to practice medicine, surgery, or any other form of healing. Making this change would preserve the boundaries among the various healing professions without expanding or altering the acupuncture scope of practice.

Major Contacts Made During This Review

Acupuncturist Association of Colorado
Colorado Chiropractic Association
Colorado Division of Behavioral Health
Colorado Division of Professions and Occupations
Colorado Medical Society
Colorado Nurses Association
Colorado Society of Osteopathic Medicine
National Certification Commission for Acupuncture and Oriental Medicine
Southwest College of Acupuncture

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.askdora.colorado.gov



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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at § 24-34-104, C.R.S.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.askdora.colorado.gov.

The regulatory functions of Director of the Division of Professions and Occupations (Director and Division, respectively) within DORA, as enumerated in Article 29.5 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2013, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the administration of the acupuncturist licensing program pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of acupuncturists should be continued for the protection of the public and to evaluate the performance of the Director. During this review, the Director must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, DORA staff interviewed the Director and Division staff, reviewed the Director's records including complaint and disciplinary actions, interviewed officials with state and national professional associations, interviewed health care providers, visited an acupuncture training program, reviewed Colorado statutes and rules, and reviewed the laws of other states.

Profile of the Profession

One of the oldest healing arts in the world, acupuncture has been practiced for thousands of years. The practice is part of traditional Chinese medicine, a medical system based on the idea that human health depends on striking a balance between two opposing, mutually dependent forces: yin, representing the cold, passive forces, and yang, representing the hot, active forces. Under this model, vital energy, or qi (pronounced "chee"), flows along pathways through the body known as meridians. An imbalance between yin and yang can block the flow of qi and this blockage causes disease.

Traditional Chinese medicine identifies over 2,000 anatomical points along these meridians. The practice of acupuncture involves using thin, solid metal needles to penetrate the skin and stimulate these points as a means of balancing yin and yang and restoring the flow of qi, thereby improving and maintaining health.

Acupuncturists evaluate patients' symptoms and health history before selecting which points to stimulate. Acupuncturists typically use 6 to 12 needles per appointment and insert needles to a depth of ¼ to 1 inch. Once the needles are inserted, practitioners may stimulate the needles by manipulating them by hand or by using low-frequency electrical pulses. Modern acupuncture needles are sterile, individually wrapped, and intended to be used only once.

The practice of acupuncture also includes the use of magnets or lasers to stimulate acupuncture points, cupping (the use of heat-filled glass cups to create suction against the body), moxibustion (the burning of herbs near acupuncture points), herbal remedies, and other treatments.

In 43 states, including Colorado, acupuncturists must hold a state credential such as a license in order to practice. Most states require license applicants to complete a diploma program in acupuncture or oriental medicine accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) and pass a national certification examination.

According to ACAOM's accreditation standards, acupuncture curricula must be at least three years long and include a minimum of 1,905 clock hours of instruction, and Oriental medicine programs must be at least four years long with a minimum of 2,625 clock hours of instruction.² There are 74 accredited acupuncture and oriental medicine programs in the United States: 66 offering masters' degrees and 8 offering doctoral degrees. There are three programs in Colorado, all of which offer masters' degrees.

With the exception of California, which uses its own examination, all states requiring licensure use the certification examinations offered by the National Certification Commission for Acupuncture and Oriental Medicine.

Most acupuncturists are self-employed or in solo practice, but acupuncturists also work in group practices, multidisciplinary practices with other health care providers, hospitals, community clinics, and other settings.³

² ACAOM *Accreditation Manual*, Accreditation Commission for Acupuncture and Oriental Medicine (2009), p. 26.

³ 2008 *Job Task Analysis: A Report to the Acupuncture and Oriental Medicine (AOM) Community*, National Certification Commission for Acupuncture and Oriental Medicine (2010), p. 22.

The salaries of acupuncturists vary widely depending on experience and geographical location, but most acupuncturists (70 percent) earn \$60,000 or less per year.⁴ Colorado is home to a considerable number of acupuncturists: only California and Washington have more.

The most common presenting symptom of people seeking treatment from acupuncturists is musculoskeletal pain, followed by reproductive system disorders.⁵

⁴ *2008 Job Task Analysis: A Report to the Acupuncture and Oriental Medicine (AOM) Community*, National Certification Commission for Acupuncture and Oriental Medicine (2010), p. 19.

⁵ *2008 Job Task Analysis: A Report to the Acupuncture and Oriental Medicine (AOM) Community*, National Certification Commission for Acupuncture and Oriental Medicine (2010), p. 27.

Legal Framework

History of Regulation

The General Assembly instituted the regulation of acupuncturists in 1989 when it passed Senate Bill 89-009. Before that date, Colorado permitted only medical doctors to practice acupuncture. The bill established an acupuncture regulatory program within the Division of Registrations (Division, now called the Division of Professions and Occupations), within the Department of Regulatory Agencies (DORA) and vested the Division Director (Director) with the authority to regulate acupuncturists. The bill required acupuncturists to meet certain minimum requirements, to register with the Director, and to disclose to patients specific information—including their contact information, their education and experience, fees, and information on how to file a complaint with the Director—before providing treatment. The bill compelled the Director to inspect acupuncture offices on a routine basis to assure they were in compliance with the law.

Following DORA's 1991 sunset review the General Assembly passed Senate Bill 92-006, which made numerous changes to the law, including adding elements to acupuncturists' mandatory disclosure, exempting students enrolled in an acupuncture education program from the registration requirement, and expanding the grounds for disciplinary action. The bill also lifted the requirement that the Director routinely inspect acupuncture clinics, requiring instead that the Director inspect only those clinics against which someone had filed a complaint.

In 1995, the General Assembly passed House Bill 95-1182, which made numerous changes to the acupuncture law. The bill revised the statutory definition of "acupuncture"—which had previously focused solely on the use of needles—redefining it as a system of health care based on traditional oriental medical concepts. The bill also added language prohibiting acupuncturists from using western medical diagnostic tests and procedures and mandated that acupuncturists purchase and maintain professional liability insurance.

DORA conducted a sunset review of the program in 2001, which resulted in the General Assembly passing House Bill 02-1117. The bill replaced the term "registration" with "licensure" and established the requirements for acupuncturists seeking licensure by endorsement.

In 2004 and 2006, the General Assembly passed Senate Bill 04-024 and House Bill 06-1264, respectively, both of which made numerous technical changes that aligned the acupuncture statute with those of other occupational licensing programs within the Division.

Colorado Law

The laws governing acupuncturist regulation are housed within Article 29.5 of Title 12, Colorado Revised Statutes. The Director is vested with the authority to regulate acupuncturists in Colorado.

The duties of the Director include:⁶

- Adopting rules;
- Approving or denying license applications;
- Establishing and collecting license and renewal fees;
- Conducting investigations, holding hearings, and taking evidence regarding complaints against acupuncturists; and
- Seeking injunctions against anyone committing an act prohibited by the acupuncture statute.

Acupuncturists must have a license to practice in Colorado.⁷ To qualify for a license, applicants must submit to the Director an application⁸ with evidence documenting:

- Completion of an acupuncture education program accredited by the Accreditation Commission for Acupuncture and Oriental Medicine, or education, experience, or training which are substantially similar;
- Current certification by the National Certification Commission for Acupuncture and Oriental Medicine;⁹ and
- Possession of professional liability insurance in one of the following amounts:¹⁰
 - For a sole proprietor or general partnership, \$50,000 per incident and \$50,000 per year.
 - For a limited liability company or corporation, \$300,000 per incident and \$300,000 per year.

Applicants are also required to submit a copy of the mandatory disclosure statement they will provide to patients. The statement must include the applicant's contact information and a detailed description of his or her education, experience, and professional credentials, and contain affirmations that:¹¹

- The patient is entitled to information about the type and potential duration of therapy;
- The patient is entitled to seek a second opinion or terminate therapy at any time;
- DORA regulates the practice of acupuncture; and

⁶ § 12-29.5-110(1), C.R.S.

⁷ § 12-29.5-105(1.5)(a), C.R.S.

⁸ § 12-29.5-104(1), C.R.S.

⁹ § 12-29.5-104(3)(a) and (b), C.R.S, and Director's Rule 1.

¹⁰ § 12-29.5-104(6), C.R.S.

¹¹ § 12-29.5-103(1), C.R.S.

-
- Sexual intimacy is never appropriate in a professional relationship and should be reported to the Director.

Applicants who hold an acupuncturist license in another state follow essentially the same procedure as those applying for an original license, except that endorsement applicants must also provide verification of their licenses in other states.¹²

Students enrolled in a bona fide acupuncture education program are exempt from the licensing requirement as long as they are working under the direct, on-site supervision of a licensed acupuncturist, who is responsible for the students' practice. The supervising acupuncturist must report the names and home addresses of all such students to the Director.¹³

Scope of Practice

Colorado law defines the practice of acupuncture as:

...the insertion and removal of acupuncture needles, the application of heat therapies to specific areas of the human body, and traditional oriental adjunctive therapies.¹⁴

Adjunctive therapies within the scope of acupuncture include manual, mechanical, thermal, electrical, and electromagnetic treatment, the recommendation of oriental therapeutic exercises, and the recommendation of herbs and dietary guidelines.¹⁵

By law, the practice of acupuncture must be governed by traditional oriental medical concepts and does not include the use of western medical diagnostic tests and procedures, such as magnetic resonance imaging, X-rays, and ultrasound.¹⁶

The law also specifically excludes the following from the definition of the practice of acupuncture:¹⁷

- Osteopathic medicine and osteopathic manipulative treatment;
- Chiropractic and therapies allowed as part of the practice of chiropractic; and
- Physical therapy or therapies allowed as part of the practice of physical therapy.

¹² § 12-29.5-104.5, C.R.S.

¹³ § 12-29.5-105(2), C.R.S.

¹⁴ § 12-29.5-102(3.5), C.R.S.

¹⁵ § 12-29.5-102(3.5), C.R.S.

¹⁶ § 12-29.5-102(3.5), C.R.S.

¹⁷ § 12-29.5-102(3.5), C.R.S.

Complaints and Enforcement

The Director is responsible for investigating complaints against acupuncturists and taking disciplinary action against acupuncturists who violate the law. Grounds for disciplinary action include:¹⁸

- Failing to provide the mandatory disclosure, or providing false or misleading information in such disclosure;
- Committing insurance fraud;
- Failing to refer a patient to an appropriate practitioner when the problem of the patient is beyond the training, experience, or competence of the acupuncturist;
- Accepting commissions, rebates or other forms of remuneration for referring clients to other professionals;
- Offering or giving commissions, rebates, or other forms of remuneration for the referral of clients;
- Engaging in sexual contact with a patient;
- Failing to meet the minimum standards of care of similar practitioners under similar circumstances;
- Continuing in the practice of acupuncture while:
 - Subject to any physical or mental disability which renders the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety;
 - Afflicted with a communicable, infectious, or contagious disease of such a serious nature as to render the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety; or
 - Abusing or habitually or excessively using any habit-forming drug or controlled substance;
- Having been convicted of a felony or having entered a plea of guilty or *nolo contendere* to a felony;
- Publishing or circulating false or misleading claims or statements relating to acupuncture or to the acupuncturist's practice, capabilities, services, methods, or qualifications; and
- Failing to comply with, or aiding or abetting a failure to comply with, the requirements of any law or rule governing the practice of acupuncture.

If an investigation reveals that an acupuncturist has violated the law, the Director may take formal disciplinary action. Possible actions include suspending or revoking the acupuncturist's license, placing the acupuncturist on probation, or issuing a letter of admonition.¹⁹

¹⁸ § 12-29.5-106(1), C.R.S.

¹⁹ § 12-29.5-107(2), C.R.S.

If the Director has reason to believe that an acupuncturist poses an imminent threat to the public health and safety, or if a person is practicing acupuncture without a license, the Director can issue an order to cease and desist such activity.²⁰

The Director has the authority to order an acupuncturist to undergo a physical or mental examination to determine whether the acupuncturist is able to practice with reasonable skill and safety.²¹

If the Director finds that an acupuncturist's conduct does not warrant formal action, the Director dismisses the complaint. However, if the complaint reveals conduct that, if repeated, might lead to serious consequences, the Director has the option of dismissing the complaint via a confidential letter of concern.²²

²⁰ § 12-29.5-107(5)(a), C.R.S.

²¹ § 12-29.5-110(1)(j), C.R.S.

²² § 12-29.5-107(2.5), C.R.S.

Program Description and Administration

The Director of the Division of Professions and Occupations (Director and Division, respectively) within the Colorado Department of Regulatory Agencies (DORA) is vested with the authority to regulate acupuncturists. By policy, the Director delegates specified powers and duties to the director of the Health Services section within the Division and to the director of the Office of Acupuncture Licensure (Office).²³

Table 1 illustrates, for the five fiscal years indicated, the expenditures and staff associated with acupuncturist regulation.

Table 1
Agency Fiscal Information

Fiscal Year	Total Program Expenditure	FTE
06-07	\$36,784	0.25
07-08	\$39,422	0.30
08-09	\$77,970	0.30
09-10	\$77,912	0.45
10-11	\$75,270	0.45

In October 2011, there were 0.60 full-time equivalent (FTE) employees devoted to the program, including:

- General Professional VII (Section Director) = 0.05 FTE: Promulgates rules, takes disciplinary actions, and oversees all regulatory functions mandated in the acupuncture law.
- General Professional III (Program Director) = 0.30 FTE: Administers the day-to-day operations of the Office.
- Administrative Assistant III = 0.25 FTE: Provides general administrative support to the Office.

This number does not include employees in the centralized offices of the Division, which provide licensing, administrative, technical, and investigative support to the Office. However, the cost of those employees is reflected in the Total Program Expenditures.

The total program expenditure increased significantly from fiscal year 07-08 to 08-09 due to an increase in legal services expenditures, which rose from \$1,580 in fiscal year 07-08 to \$21,400 in fiscal year 08-09. A rise in the number of complaints received, along with the magnitude and complexity of some of these cases, drove this increase.

²³ Office of Acupuncture Licensure Policy 10-2.

Since this initial increase, the program has continued to receive several complaints each year that could not be resolved via the Division's expedited settlement process and had to be referred to the Office of the Attorney General. Because of this trend, legal services expenditures—and consequently, total program expenditures—have remained high over the past three fiscal years.

Table 2 illustrates, for the five fiscal years indicated, the fees associated with the acupuncture program.

Table 2
Fees

Fiscal Year	Original	Renewal*	Reinstatement	Reactivation
06-07	\$100	--	\$80	\$25
07-08	\$100	\$57	\$72	\$25
08-09	\$100	--	\$72	\$25
09-10	\$100	\$117	\$132	\$132
10-11	\$100	--	\$132	\$132

*Acupuncturist licenses are renewed every two years and the renewal fee covers the entire two-year period.

The increase in renewal and reinstatement fees from fiscal year 07-08 to fiscal year 09-10 is due to the increase in legal services expenditures described above.

The Division changed its administrative procedure for reactivating inactive licenses in fiscal year 09-10: it started treating reactivations like reinstatements, since both involve re-entering active practice and require similar documentation demonstrating continued competence. This change in procedure accounts for the increase in the reactivation fee from fiscal year 08-09 to fiscal year 09-10.

Examinations and Certification

In order to qualify for licensure, Colorado applicants must obtain certification from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM).

To qualify for certification applicants must pass three examinations:

- Acupuncture with Point Location;
- Biomedicine, which includes western medical concepts and terminology; and
- Foundations of Oriental Medicine.

To sit for the certification examinations, applicants must have completed a minimum of 1,490 clock hours of academic coursework in an accredited acupuncture education program and a clean needle technique course.²⁴

Table 3 shows the content areas for each of the examinations required for certification.

Table 3
Content Areas for the Certification Examinations

Examination	Content Area	Percent of Examination
Acupuncture with Point Location ²⁵		
	Developing a comprehensive treatment plan based upon patient's identified syndrome (includes point location)	40
	Treatment techniques and mode of administration	20
	Use of modalities or agents (e.g., cupping)	25
	Assess treatment outcomes and modify treatment (includes making appropriate referrals)	15
Biomedicine ²⁶		
	Western medical assessment	55
	Pharmaceuticals and supplementations	15
	Safety (e.g., knowledge of cardiopulmonary resuscitation and universal precautions)	15
	Practice management issues	15
Foundations of Oriental Medicine ²⁷		
	Diagnostic examination	25
	Assessment and analysis—differentiation and diagnosis	40
	Treatment principle, treatment strategy, disease prevention and patient education	35

Each examination is computer-based and consists of 100 multiple-choice questions with a 2½ hour time limit.²⁸ Candidates may take the examinations in any order. There is a \$300 fee to sit for each examination,²⁹ so applicants for acupuncture certification typically pay a total of \$900 in examination fees.

²⁴ NCCAOM® Examination Study Guide for the Diplomate of Acupuncture Certification for the 2012 Examination Administration, National Certification Commission for Acupuncture and Oriental Medicine (2012), p. 2.

²⁵ NCCAOM® Examination Study Guide for the Diplomate of Acupuncture Certification for the 2012 Examination Administration, National Certification Commission for Acupuncture and Oriental Medicine (2012), p. 6-28.

²⁶ NCCAOM® Examination Study Guide for the Diplomate of Acupuncture Certification for the 2012 Examination Administration, National Certification Commission for Acupuncture and Oriental Medicine (2012), p. 29-37.

²⁷ NCCAOM® Examination Study Guide for the Diplomate of Acupuncture Certification for the 2012 Examination Administration, National Certification Commission for Acupuncture and Oriental Medicine (2012), p. 38-57.

²⁸ NCCAOM® Examination Study Guide for the Diplomate of Acupuncture Certification for the 2012 Examination Administration, National Certification Commission for Acupuncture and Oriental Medicine (2012), p. 69.

²⁹ NCCAOM® 2012 Applicant/Candidate Fee Schedule, p. 1.

Table 4 illustrates the number of NCCAOM examinations administered to first-time test-takers in Colorado for the five fiscal years indicated, and the respective pass rates. The national pass rates are provided for comparison.

Table 4
Colorado Candidates Taking the NCCAOM Examinations and Pass Rates

Examination Given	Calendar Year	Colorado Pass Rate (%)	National Pass Rate (%)
Acupuncture and Point Location*			
	2007	85.7	79.0
	2008	91.9	86.2
	2009	92.2	86.2
	2010	89.2	85.7
	2011	88.9	86.5
Biomedicine			
	2007	88.6	84.8
	2008	82.3	91.5
	2009	92.7	91.1
	2010	79.4	75.2
	2011	79.4	79.6
Foundations of Oriental Medicine			
	2007	90.3	92.9
	2008	98.4	96.2
	2009	100	95
	2010	95.6	94.8
	2011	94.6	92.7
Chinese Herbology**			
	2007	75.0	75.2
	2008	83.7	81.6
	2009	85.9	80.1
	2010	85.2	80.6
	2011	84.4	81.2

*Before 2008, there were two separate examinations: one for Acupuncture, one for Point Location. The pass rates for 2007 were recalculated based on the separate pass rates for each examination.

**Required for certification in Oriental Medicine only.

The pass rates for Colorado candidates hew fairly closely to the national pass rates.

After passing the examinations, candidates may apply to NCCAOM for certification by submitting an application, final transcripts showing completion of an accredited acupuncture education program, and a non-refundable fee (\$475 for certification in acupuncture only and \$595 for certification in Oriental Medicine, which includes both acupuncture and Chinese herbology).³⁰

³⁰ NCCAOM® 2012 Applicant/Candidate Fee Schedule, p. 1.

Candidates have four years from the date that NCCAOM receives their initial application to pass the examinations and become certified.³¹

Those who obtain certification must recertify every four years by completing a certain amount of professional development activities and paying a \$230 recertification fee.³²

Those certified in acupuncture may use the title “Dipl. Ac. (NCCAOM)” and those certified in Oriental Medicine may use the title “Dipl. O.M. (NCCAOM);” however, they are not authorized to practice acupuncture until they receive a Colorado license.

Licensing

There are two primary routes to acupuncturist licensure in Colorado: examination and endorsement. Applicants must complete the appropriate application and submit it with all supporting documentation to the Division’s Office of Licensing. A licensing specialist reviews the application and notifies the applicant of any deficiencies. Once the application is complete, a licensing specialist evaluates the application to ensure the applicant meets the requirements. If requirements are met, the license is issued. If not, the licensing specialist notifies the applicant in writing, and the application is kept on file for one year.

Table 5 illustrates, for the five fiscal years indicated, the number of new licenses issued by method.

Table 5
New Acupuncturist Licenses Issued by Method

Fiscal Year	Licensed by Examination	Licensed by Endorsement	Total
06-07	74	25	99
07-08	71	30	101
08-09	78	24	102
09-10	71	28	99
10-11	49	37	86

The number of newly licensed acupuncturists was consistent between fiscal years 06-07 and 09-10, but dropped somewhat in fiscal year 10-11. Office staff did not have a specific explanation for this drop.

³¹ NCCAOM® *Examination Study Guide for the Diplomate of Acupuncture Certification for the 2012 Examination Administration*, National Certification Commission for Acupuncture and Oriental Medicine (2012), p. 67.

³² NCCAOM® 2012 Diplomate Recertification Fees, p. 1.

Table 6 illustrates the total number of licensed acupuncturists for the five fiscal years indicated.

Table 6
Total Number of Licensed Acupuncturists

Fiscal Year	Active	Inactive*	Total
06-07	918	38	956
07-08	902	33	935
08-09	1,017	29	1,046
09-10	1,004	22	1,026
10-11	1,115	11	1,126

*The Division no longer offers inactive status for acupuncturists. Acupuncturists who are not actively practicing may allow their licenses to expire, and if they want to re-enter active practice at a later time, they can apply for reinstatement.

Although the total number of licensed acupuncturists has fluctuated somewhat from year to year, the overall pattern from fiscal year 06-07 to fiscal year 10-11 demonstrates gradual growth in the acupuncture profession.

Complaints/Disciplinary Actions

Anyone, including consumers, employers, and the Director, can file a complaint against a licensed acupuncturist or anyone who may have violated the acupuncture laws (e.g., practiced acupuncture without a license).

Functioning as program staff to the Director, Office staff reviews incoming complaints to determine whether they might constitute a violation of the acupuncture laws. If so, staff notifies the acupuncturist being complained against of the complaint and allows the acupuncturist 30 days to respond to the allegations. When the response is received, staff forwards the complaint and the response, as well as a preliminary recommendation for how the case should be handled, to the Director. Staff might recommend dismissing the case, forwarding the complaint to the Division's Office of Investigations, or forwarding the case to an expert for review.

Table 7 illustrates the number and types of complaints received by the Office for the five fiscal years indicated.

Table 7
Complaints Filed Against Acupuncturists

Nature of Complaints	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
Practicing without a License	1	1	2	14	4
Standard of Practice	1	6	6	2	1
Scope of Practice	0	1	0	0	3
Sexual Misconduct	1	0	3	1	0
Felony Conviction	0	1	0	1	0
Fraud	1	4	1	0	0
Trainee Misconduct	0	0	1	0	0
Misuse of Title	0	0	2	0	0
Failure to Refer	0	0	0	0	3
Total	4	13	15	18	11

Office staff had no explanation for the apparent rise in the total number of complaints from fiscal year 06-07 to fiscal year 07-08. In subsequent years, the total number remained fairly consistent.

Office staff attributed the rise in the number of unlicensed practice complaints from fiscal year 08-09 to fiscal year 09-10 to the transition from paper to online-only renewals. Starting with the December 2009 renewal cycle, instead of mailing paper renewal applications to be completed and returned with payment, the Division started mailing renewal postcards directing licensees to a website where they could renew online. This transition to online-only renewals resulted in a number of acupuncturists failing to renew their licenses in a timely manner, which led to an unusual number of complaints regarding practicing on an expired license.

It appears the increase in complaints was a one-time incident due to this transition. Acupuncturists have since gone through another online renewal cycle without a corresponding increase in late renewals.

Table 8 illustrates the number and types of final actions the Director has taken for the five fiscal years indicated.

Table 8
Final Actions against Acupuncturists

Type of Action	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11
Revocations (relinquishments)	1	1	0	0	0
Stipulations	1	0	1	2	1
Letters of Admonition	1	1	0	2	1
Cease and Desist Orders	3	1	2	0	1
Total Disciplinary Actions	6	3	3	4	3
Dismissals	3	4	8	15	2
Dismissals with Letters of Concern	1	1	3	1	8
Total Dismissals	4	5	11	16	10

The reason for the high number of dismissals in fiscal year 09-10 is due to the conversion to online renewals discussed above. The unusual number of late renewals resulted in a correspondingly high number of complaints for practicing on an expired license. It is standard protocol for the Director to dismiss cases against acupuncturists who have practiced on a lapsed license for fewer than six months: most of the acupuncturists complained against renewed their licenses within this time frame.

Acupuncturists who practice for longer than six months on an expired licensed are subject to disciplinary action. In fact, all three letters of admonition (LOAs) issued in fiscal years 09-10 and fiscal year 10-11 were due to practicing on an expired license for a period of 18 months or longer.

Between these LOAs and the seven cease and desist orders issued, 10 of the 19 disciplinary actions taken over the past five years were related to unlicensed practice.

Analysis and Recommendations

Recommendation 1 – Continue the regulation of acupuncturists for nine years, until 2022.

Article 29.5 of Title 12, Colorado Revised Statutes (C.R.S.), vests the power to regulate acupuncturists with the Director of the Division of Professions and Occupations (Director) within the Department of Regulatory Agencies (DORA). The statute authorizes the Director to license qualified applicants, promulgate rules, and discipline acupuncturists found to have violated the law.

The first sunset criterion asks whether this regulation protects the public health, safety and welfare.

Acupuncture has been practiced in China, Japan, Korea, and other countries for thousands of years, but was virtually unknown in mainstream America until relatively recently. By most accounts, it was President Nixon's trip to China in 1970 that raised Americans' awareness of acupuncture. Following that, interest in the practice continued to grow and by 2007, the National Institutes of Health reported that an estimated 3.1 million U.S. adults and 150,000 children had visited an acupuncturist in the previous year. This represented an increase of roughly 30 percent since 2002.³³

Clearly, acupuncture is no longer on the fringe, and its popularity—like that of other complementary and alternative medical practices, such as massage, meditation, and herbal or botanical medicines—is likely to continue. People seek acupuncture treatment for a wide variety of reasons, from anxiety to chronic pain to infertility.

There are few complications associated with acupuncture, but there are significant potential risks. Improper sterilization of needles could lead to infection, and improper placement of needles could puncture a lung. These instances are extremely rare, but underscore the importance of requiring acupuncturists to meet certain minimum standards before entering the marketplace.

In September 2012, there were 1,141 licensed acupuncturists in the state of Colorado.

Under the current regulatory regime, prospective acupuncturists are required to complete an education program consisting of at least 1,905 clock hours of instruction including 500 hours of supervised clinical experience and obtain national certification (which requires passing three examinations) before applying for a Colorado license. These requirements assure that entry-level acupuncturists possess the skills and knowledge to practice safely, thereby protecting the public.

³³ *Acupuncture: An Introduction*, National Institutes of Health, National Center for Complementary and Alternative Medicine (2007), p. 2.

The Director also protects the public by disciplining acupuncturists who have violated the law. If an acupuncturist has a practice issue that could be corrected with further education or supervision, the Director may put that person on probation. If an acupuncturist has caused significant harm to a patient, the Director may revoke that person's license.

That said, there is relatively little enforcement activity associated with acupuncturists and a substantial number of disciplinary actions taken (10 of the 19 actions taken over the five years analyzed) relate to unlicensed practice rather than issues requiring professional expertise. For this reason, the Director model remains the most cost-effective regulatory structure for this profession. The Director may retain experts to review substandard practice complaints and when issues regarding scope of practice or changes in the profession arise, he or she may convene an advisory committee to provide professional expertise on those matters.

Through its licensing, rulemaking and disciplinary activities, the acupuncturist licensing program protects the public health, safety and welfare of Coloradans. For these reasons, the General Assembly should continue the regulation of acupuncturists for nine years, until 2022. A nine-year sunset date appropriately reflects the scope of the changes this report recommends.

Recommendation 2 – Repeal the words “traditional” and “oriental” from the definition of the practice of acupuncture in reference to adjunctive therapies.

Section 12-29.5-102(3.5), C.R.S., defines the "practice of acupuncture" as:

...the insertion and removal of acupuncture needles, the application of heat therapies to specific areas of the human body, and **traditional oriental** adjunctive therapies. **Traditional oriental** adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, the recommendation of oriental therapeutic exercises, and, subject to federal law, the recommendation of herbs and dietary guidelines. {emphasis added}

Acupuncture has been continuously practiced for thousands of years, and inevitably, the practice has evolved over time. While the practice remains firmly grounded in tradition, the modalities and techniques used by modern acupuncturists in the United States—and China, for that matter—would likely be unrecognizable to its original practitioners.

At the time of DORA's first sunrise review of acupuncturists, in 1986, the use of electrical devices and lasers to stimulate acupuncture points was already an established part of acupuncturists' practice. Despite the fact that Colorado acupuncturists have been safely using electro-stimulation and lasers for nearly 40 years, it would be difficult to describe those techniques as "traditional." This leads to an apparent contradiction within the statutory provision regarding adjunctive therapies.

Section 12-29.5-102(1), C.R.S., defines acupuncture as "a system of health care based on traditional oriental medical concepts that employs oriental methods of diagnosis, treatment and adjunctive therapies." This definition establishes that while the practice derives from ancient concepts, the methods of diagnosis, treatment, and adjunctive therapies are not necessarily in themselves "traditional." This provision establishes the basis for the practice of acupuncture, while accommodating the fact that the practice has evolved over time.

The definition of the "practice of acupuncture" should be revised in a similar way. Rather than "traditional oriental adjunctive therapies," the definition should simply refer to "adjunctive therapies within the scope of acupuncture."

Making this change would not change or expand acupuncturists' scope of practice. Rather, this change would remove the contradiction that exists in the current definition of the "practice of acupuncture" and align that definition with the definition of "acupuncture." The revised definition would provide a more accurate reflection of acupuncture scope of practice in the 21st century and allow for the continuing evolution of the profession.

Therefore, the General Assembly should revise the definition of the "practice of acupuncture" to simply address adjunctive therapies within the scope of acupuncture.

Recommendation 3 – Revise the language regarding the practice of acupuncture as it relates to other healing arts.

Under section 12-29.5-102(3.5), C.R.S., the practice of acupuncture does not include:

- Osteopathic medicine and osteopathic manipulative treatment;
- Chiropractic or chiropractic adjustment or therapies allowed as part of the practice of chiropractic or chiropractic adjustment; or
- Physical therapy or therapies allowed as part of the practice of physical therapy.

This section appropriately prohibits acupuncturists from engaging in the practice of other health care professions. However, it also prohibits them from performing therapies allowed as part of those other professions. This causes considerable problems for acupuncturists.

The scopes of practice of health care providers inevitably overlap. For example, Colorado law authorizes acupuncturists, massage therapists, occupational therapists, and physical therapists to perform some type of manual therapy. Consequently, a wholesale prohibition on performing any therapies that fall within another profession's scope could effectively prohibit a practitioner from performing therapies that are within his or her own scope.

The performing of dry-needling by physical therapists illustrates the problem with the current wording of section 12-29.5-102(3.5), C.R.S.

In 2007 the Director promulgated a rule authorizing physical therapists to perform dry-needling, a physical intervention that uses a filiform needle to stimulate trigger points.³⁴ The stimulation of trigger points using needles is a core aspect of acupuncture practice and has been for millennia. But because dry-needling is "allowed as part of the practice of physical therapy," section 12-29.5-102(3.5), C.R.S., arguably prohibits acupuncturists from performing dry-needling. The wording of the provision places unnecessary restrictions on the practice of acupuncture.

Another issue with the wording of section 12-29.5-102(3.5), C.R.S., is that it addresses specific professions (e.g., osteopathy, chiropractic, and physical therapy). This means that as new professions become regulated, the General Assembly would have to continually revise this provision.

The Physical Therapy Practice Act contains a provision stating:³⁵

[n]othing in this article authorizes a physical therapist to perform...[the] practice of medicine, surgery, or any other form of healing except as authorized by the provisions of this article[.]

This provision clearly establishes that physical therapists must stay within their scope of practice and does not have the unintentional effect of curtailing physical therapy practice. Further, the broad wording of the provision applies equally to professions that may become regulated in the future.

The General Assembly should use this wording from the Physical Therapy Practice Act as a model and revise section 12-29.5-102(3.5), C.R.S., to state that:

[n]othing in this article authorizes an acupuncturist to perform...[the] practice of medicine, surgery, or any other form of healing except as authorized by the provisions of this article.

Making this change would not expand or alter in any respect the acupuncture scope of practice, but would preserve the boundaries among the various scopes of practice for the healing professions without unnecessarily limiting the scope of acupuncturists.

³⁴ The Physical Therapy Board adopted the Director's rule at 4 CCR 732-1, 211.

³⁵ § 12-41-105(1)(a), C.R.S.

Recommendation 4 – Repeal the provision that establishes continuing to work while afflicted with an infectious disease as grounds for discipline.

Section 12-29.5-106(1)(l), C.R.S., states that it is grounds for discipline for an acupuncturist to have:

...continued in the practice of acupuncture while afflicted with a communicable, infectious, or contagious disease of such a serious nature as to render the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety [.]

While the intent of this provision is to protect the public, it is confusing and unnecessary. This provision does not establish whether the acupuncturist must *knowingly* expose the patient to a communicable disease, and does not establish what constitutes “endangering” a patient’s health.

More importantly, no other health profession regulated under Title 12, C.R.S., is subject to a similar provision. It is beneath the standard of care for any health care professional to continue to treat patients when illness compromises his or her ability to practice safely. If the Director found that an acupuncturist has placed a patient at risk by either knowingly exposing the patient to infectious disease or continuing to work while his or her ability to practice was impaired, the Director could discipline the acupuncturist under section 12-29.5-106(1)(k), C.R.S., which establishes as grounds for discipline, “departing from, or failing to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established.”

Repealing section 12-29.5-106(1)(l), C.R.S., would align the acupuncture law with the laws regulating other health professionals without placing the public at risk or imperiling the Director’s ability to take appropriate disciplinary action. Therefore, the General Assembly should repeal this provision.

Recommendation 5 – Revise grounds for discipline to remove references to “addiction” or “dependence.”

The Director may take disciplinary action against an acupuncturist who has:

[c]ontinued in the practice of acupuncture **while addicted to or dependent upon alcohol or upon any habit-forming drug** or while abusing or habitually or excessively using any such habit-forming drug or any controlled substance [.]³⁶ {emphasis added}

³⁶ § 12-29.5-106(1)(m), C.R.S.

The bolded wording presents two problems. First, it can be difficult to prove conclusively that someone is addicted to or dependent on alcohol or drugs. Second, because addiction is now understood as an illness, disciplining someone for being addicted may have legal ramifications.³⁷

The “habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance” has been established as the standard for disciplinary action in Colorado. This standard establishes the excessive use or abuse of alcohol or drugs as grounds for discipline, rather than the condition of being addicted to or dependent on such substances.

Therefore, the General Assembly should amend this provision to remove references to “addiction” and “dependence.”

Recommendation 6 – Establish that an acupuncturist's failure to properly address his or her own physical or mental condition is grounds for discipline, and authorize the Director to enter into confidential agreements with acupuncturists to address their respective conditions.

One of the Director's critical responsibilities is to take disciplinary action against acupuncturists who pose a threat to the patients under their care. The Director may take disciplinary action against any acupuncturist who has:³⁸

[c]ontinued in the practice of acupuncture while subject to any physical or mental disability which renders the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety[.]

Having such a condition may also affect an applicant's ability to be licensed as an acupuncturist. The application for initial licensure asks:³⁹

In the last five years, have you been diagnosed with or treated for a condition that significantly disturbs your cognition, behavior, or motor function, and that may impair your ability to practice as an acupuncturist safely and competently, such as bipolar disorder, severe major depression, schizophrenia or other major psychotic disorder, a neurological illness, or sleep disorder?

³⁷ The U.S. Supreme Court ruled in *Robinson v. California*, 370 U.S. 660 (1962), that addiction is an illness, which may be contracted innocently or involuntarily, and, therefore, the State of California could not punish a person based on such grounds.

³⁸ § 12-29.5-106(1)(I), C.R.S.

³⁹ Colorado Office of Acupuncture Licensure, Application for Original License, May 2011, p. 3.

Further, at each two-year renewal, acupuncturists must attest that they are in compliance with the law, so in effect they are attesting that they have not practiced while subject to such a physical or mental condition. If they have acquired such a condition since the last renewal, they must disclose such to the Director.

The intent of these provisions is clear: to protect the public from unsafe practitioners. But in many cases, acupuncturists with such conditions could continue to practice safely, under certain defined circumstances. For example, an acupuncturist with a spinal injury could continue to diagnose and evaluate patients, but might have to delegate certain manual therapies to another practitioner. An acupuncturist with bipolar disorder might be able to treat patients safely provided he or she takes the proper medication.

Under the current system, acupuncturists with such conditions could enter into an agreement or practice limitation with the Director in order to continue practicing via a public disciplinary order. Section 12-29.5-107(2)(b), C.R.S., allows the Director to set the terms of the probation, which could include requiring an acupuncturist to undergo a physical or mental examination; to complete therapy, training, or education; or to enter into a period of supervised practice. As part of the disciplinary order, the Director could also restrict the scope of the acupuncturist's practice to ensure that the acupuncturist does not practice beyond the limits of his or her capabilities.

These orders provide a mechanism for these acupuncturists to continue to practice, but are troubling philosophically. The orders are considered discipline, and become part of the acupuncturist's permanent record. Being injured in a car accident, suffering a stroke, or receiving a diagnosis of bipolar disorder is fundamentally different from committing an act that constitutes grounds for discipline under the acupuncture law. While these conditions might temporarily or permanently affect an acupuncturist's ability to treat patients, it seems unjust for an acupuncturist who successfully manages bipolar disorder with medication to be included in the same category as an acupuncturist who has sexually assaulted a patient. Not only does this stigmatize the person with the condition, it can affect his or her ability to participate in provider networks and can increase malpractice insurance rates.

Current law presents acupuncturists who have a physical or mental condition that might affect their practice with a stark choice: violate the law by continuing to practice, stop practicing entirely, or enter into a public disciplinary order.

During the 2010 legislative session, the General Assembly passed House Bill 10-1260 (HB 1260), which contains a provision allowing the Medical Board to enter into confidential agreements with physicians with physical or mental conditions that might affect their practice. These agreements establish the measures that physicians must adhere to in order to practice safely.

The legislation made another important change: previously, a physician would be subject to discipline simply for having a physical or mental condition that might affect his or her practice. While the acupuncture law does not establish having such conditions as grounds for discipline, it does not provide a way for acupuncturists with such conditions to continue to practice without discipline. Under HB 1260, the Medical Board may discipline a physician if he or she fails to:⁴⁰

Notify the board...of a physical or mental illness or condition that impacts the licensee's ability to perform a medical service with reasonable skill and with safety to patients, failing to act within the limitations created by a physical or mental illness or condition that renders the licensee unable to perform a service with reasonable skill and with safety to the patient, or failing to comply with the limitations agreed to under a confidential agreement [.]

Simply having a physical or mental condition or illness is no longer a reason to impose discipline. As long as the physician notifies the Medical Board of his or her condition or illness, enters into a confidential agreement outlining the measures he or she must take to assure safe practice, and adheres to the agreement, there is no violation of the Medical Practice Act. Consequently, these agreements do not constitute discipline and do not appear to be reportable to the National Practitioner Data Bank. If a physician fails to meet the requirements or stay within the limitations enumerated in the agreement, the Medical Board may then take disciplinary action. This assures adequate public protection.

The General Assembly should enact a similar provision for acupuncturists by granting the Director the authority to enter into confidential agreements with acupuncturists. To assure public protection, the General Assembly should also establish failure to properly address the acupuncturist's own physical or mental condition as grounds for discipline.

Recommendation 7 – Repeal the requirement that letters of admonition be sent by certified mail.

Section 12.29.5.107(2)(c)(I), C.R.S., requires the Director to send letters of admonition to acupuncturists via certified mail. While this delivery method allows the Office of Acupuncture Licensure (Office) to verify that a delivery attempt was made, it does not guarantee that the addressee actually receives the letter. The addressee can decline to sign for or pick up the letter, and then claim he or she never received it. This defeats the purpose of sending the letter by certified mail.

Certified mail also costs more than first-class mail.

⁴⁰ House Bill 10-1260, § 29.

The General Assembly should repeal the requirement that letters of admonition be sent by certified mail, requiring instead that such letters be sent via first-class mail. Section 12-29.5-103(2), C.R.S., requires that acupuncturists report changes of address to the Office within five days of the change. If the change is made in a timely manner, it is very unlikely that the licensee would not receive a properly addressed letter of admonition.

Requiring that letters of admonition be sent via first-class mail would save money and streamline the administrative process for letters of admonition without compromising the Director's enforcement authority. Therefore, the General Assembly should repeal the requirement that letters of admonition be sent by certified mail.

Recommendation 8 – Require acupuncturists who have had their licenses revoked, or who have surrendered their licenses in lieu of disciplinary action, to wait two years to reapply.

Most health care professionals who have had their licenses revoked, or who have surrendered their licenses in lieu of revocation, must wait two years to reapply for licensure. These professionals, including dentists, midwives, nurses, podiatrists, physical therapists, and pharmacists, are required to wait two years. Requiring individuals to wait a specified period before reapplying enhances public protection by assuring they possess minimal competency when they re-enter the workforce. Given the severity of the violations that result in revocation or surrender of a license, and the amount of time and resources it takes to process revocations and surrenders, two years is an appropriate waiting period.

The General Assembly should establish a two-year waiting period for acupuncturists who have had their licenses revoked, or who have surrendered their licenses in lieu of disciplinary action.

Recommendation 9 – Remove the requirement that supervising acupuncturists report to the Director the names and addresses of the students they supervise.

Section 12-29.5-105(2), C.R.S., exempts from the licensing requirement students who are enrolled in a bona fide training program, as long as they work under the direct, on-site supervision of a licensed acupuncturist.

By law, the supervising acupuncturist is responsible for the student's practice and for reporting to the Director the names and addresses of all students practicing under the exemption.

Office staff reports that while they retain the reported information, they have never had cause to use it. Even if a consumer were to have a complaint about the care provided by a student, the supervising acupuncturist is accountable for the practice of all students under his or her supervision, and would ultimately be the subject of the complaint.

The statutes for many other health care professions, including nursing, physical therapy, chiropractic, and massage therapy,⁴¹ carve out similar exemptions for students but do not have a similar reporting requirement.

The reporting requirement poses an administrative burden for education programs and has no apparent role in the Director's regulation of acupuncturists. Therefore, this requirement should be repealed.

⁴¹ §§ 12-38-125(1)(f) and (g), 12-41-114(1)(a), 12-33-118, and 12-35.5-110(1)(a), C.R.S., respectively.